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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,848	10/17/2003	Richard S. Ginn	937.04.01	2084
8685 7590 12/27/2010 DERGOSITS & NOAH LLP Three Embarcadero Center Suite 410 SAN FRANCISCO, CA 94111				
EXAMINER TYSON, MELANIE RUANO				
ART UNIT 3773		PAPER NUMBER		
MAIL DATE 12/27/2010		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/687,848

**Applicant(s)**

GINN, RICHARD S.

**Examiner**

MELANIE TYSON

**Art Unit**

3773

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5,7,9 and 11 is/are pending in the application.
- 4a) Of the above claim(s) 5 and 7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,9, and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to the applicant's amendment received 07 October 2010. The amendments made to the claims do not place the application in condition for allowance for the reasons set forth below. Claims 2, 4, 6, 8, 10, and 12 remain cancelled. Claims 5 and 7 remain withdrawn from consideration.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3, 9, and 11 have been fully considered but they are not persuasive. The applicant argues that Kensey fails to disclose any attachment between the elongate member and occlusion member as now required by amended claim 1. The examiner respectfully disagrees. Kensey discloses an attachment (52) between the elongate member and occlusion member. The attachment releases from the elongate member with the occlusive member and thus, it is the examiner's position that Kensey's occlusive member is releasably coupled to the elongate member by the attachment as recited in claim 1. Claim 9 fails to recite an attachment as argued and thus, it is the examiner's position that the argument is moot with respect to claim 9.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 3, 9, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Kensey (U.S. Patent No. 5,061,274).** Kensey discloses a locator device (see entire document) comprising an elongate member (38) having a distal opening in its distal region and a proximal opening in its proximal region which are connected by a lumen (for example, see Figure 3), wherein the distal region has a substantially uniform diameter, and a bioabsorbable and expandable occlusion member (20; for example, see column 5, lines 44-45) releasably coupled by an attachment (52) a specific position on the distal region of the elongate member such that it is in contact with the lumen of the elongate member (at the distal opening) and extends distally of the distal opening of the elongate member (for example, see Figure 3), wherein the occlusion member is capable of substantially blocking blood flow out of the blood vessel at a position outside the blood vessel, and wherein the elongate member is capable of being positioned in a blood vessel such that blood can enter the distal opening without passing through the occlusion member (they are separate components).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE TYSON whose e-mail address is [melanie.tyson@uspto.gov](mailto:melanie.tyson@uspto.gov) and telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 8-7 (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie Tyson/  
Primary Examiner, Art Unit 3773  
December 20, 2010